

REMARKS

Section 112 rejection

The Examiner refers to both claim 30 and claim 31 in this rejection. Based on the language cited by the Examiner, Applicant believes that the number "31" is a typo and that only claim 30 is objected to. Accordingly, only claim 30 has been amended.

Claim 30 has been amended to correct formal matters noted by the Examiner. No change to the scope of the claims is intended. Applicant respectfully submits that the claims now and previously also did satisfy 35 U.S.C. § 112.

Though changes have been made herein in an effort to advance prosecution and improve the form of the claims, Applicants respectfully traverse all prior rejections under section 112. These rejections would have been better phrased as objections, since the issues pointed to failed to rise to the level of true indefiniteness under section 112, and instead related to issues of style and preference.

Art rejections

The Examiner's interpretation of Hulbert continues to be respectfully traversed.

Claim 20 recites, inter alia:

- transmitting first traffic information units at a first power level;
- monitoring if correct reception of the transmitted units occurred; and
- transmitting second information units associated with the first information units, for which first information units the monitoring did not indicate correct reception occurred,

Since the second information units are transmitted based on the monitoring, this claim implies 3 transmissions: the initial transmission; some response indicating whether there was an error; and a transmission of the second information

By contrast, Hulbert only shows 2 transmissions: an initial transmission and some response indicating whether there was an error. Hulbert fails to teach or suggest transmission of the second information.

The Examiner cites column 3, lines 51-55. This text says:

However, if the data is reflected back. [sic] Then the transmitting end can detect a burst of errors (as that the carrier references has [sic] become inverted [sic]. In this case, the transmitting end simply inverts its transmission in order to compensate for the receiver inversion of data "at source."

The only re-transmission here is the reflection back. There is no transmission of second information. The text says "simply inverts its transmission. [emphasis added]" The word "simply" makes clear that there is only an inversion of future transmissions, no transmission of second information associated with the first information

The Examiner similarly cites col. 4, lines 57-63. This text says:

The apparatus of claim 1, wherein the first station is arranged to detect a burst of errors in data reflected back from said second station, and wherein detection of the burst of errors indicates that a carrier references has become inverted and said first station further comprises a means inverting the data if it is transmitting to compensate for the burst of errors.

It may be that Hulbert's claim 4 is a bit confusing in this respect. Claims 1 and 4 of Hulbert suffer from antecedent basis issues. Claim 1 refers to transmitting and receiving data without indicating whether the data that is transmitted and the data that is received are the same data or different data. It should be noted that in common English grammar the plural of the article "a"

is a nullity. In other words, "data" is the plural of "a datum." Therefore, in the recitations of "data" in claims 1 and 4, the definite article "the" or "said," which would normally refer back to a previously recited element, is missing. Thus when the claims say over and over again "data" it is not entirely clear whether the same or different data is referred to. Certainly the claims were not intended to mean that the same piece of data is to be transmitted back and forth indefinitely. Such a device would serve no useful purpose. It must be inferred that "data" refers to ongoing streams of continuously varying data. In view of these antecedent basis issues, namely the repeated recital of "data," it is not clear that the phrase "the data" in line 62 refers specifically back to the data that was said to be reflected in line 58 or the various ongoing streams of data set forth in lines 21-25. In view of this ambiguity, reference must be made to specification to interpret what is meant.

Column 3, lines 47-55 of the specification relate to this reflecting back. This section relates to the system responding to a specific type of data error, namely inversion. The system is said to invert its transmission to compensate for receiver inversion. The text does not say that any data is re-transmitted after the reflection. It is simply that the ongoing transmission of future data is inverted. The following paragraph goes into more detail about what is happening. Again, there is only a transmission and a reflection. There is no re-transmission after the reflection.

The Examiner says that retransmission is inherent. Applicant respectfully disagrees, if the Examiner means that there is second information as recited by Applicant. Such inherency can only be inferred by impermissible hindsight in view of Applicants' disclosure. It is noted that the title of Hulbert uses the word "retransmitted;" however, since the title talks about "comparison of retransmitted data," it is clearly only referring to that data which was

reflected by the receiving station, not to a third transmission of the associated data, unlike the claimed invention.

The Hamabe reference appears to be similarly deficient. As far as Applicant can tell, it also only increases power of ongoing transmissions, rather than having all three types of transmission referred to in Applicant's claim 20.

The impermissible hindsight in the rejection of claim 20 is compounded in the rejection of other claims, for instance claim 21. The Examiner says that since the retransmission is inherent, then inherently it must be within the threshold claimed by Applicants. This is the Examiner's line of reasoning. It does not come from the references. Applicants respectfully submit that this type of reasoning is improper under the case of *In re Lee*, 277 F. 3d. 1338 (Fed. Cir. 2002), which requires that the alleged suggestion of the invention come from the references, not from the Examiner.

The other independent claims contain recitations analogous to those cited above with respect to claim 20.

With respect to claims 8, 9, and 23, the Examiner refers to col. 3, lines 47-77 of Hulbert; but this column ends with line 65. Clarification is requested.

With respect to claim 16, Applicant notes that the Examiner merely states that the limitation of forward error correction is known in the art without citing such art. Given the absence of such citation, it is impossible for Applicant to determine what such alleged art teaches or does not teach and whether it would have been obvious to combine such art with the other references. Accordingly, Applicant respectfully submits that this rejection fails to satisfy 37 CFR 1.104.

The other rejections and points of argument raised by the Examiner would appear to be moot in view of the foregoing. Nevertheless, Applicant reserves the right to assert further arguments with respect to mooted issues at a later date, if necessary. Earlier arguments over the references are also incorporated by reference.

Applicant respectfully submits that he has answered each issue raised by the Examiner and that the application is accordingly in condition for allowance. Allowance is therefore respectfully requested.

<u>CERTIFICATE OF MAILING</u>	
I hereby certify that this correspondence is being deposited this date with the United States Postal Service as first class mail in an envelope addressed to	
Commissioner for Patents Washington, D.C. 20231	
On _____	(date)
By _____	(signature)

Respectfully submitted,

By *A. E. Barschall*
Anne E. Barschall, Reg. No. 31,089
Tel. no. 914-332-1019
Fax no. 914-332-7719
July 18, 2003